



LETTERS
ON
English Parliamentary Precedents
AS AFFECTING THE
CANADIAN PACIFIC SCANDAL.

BY
"PARLIAMENTUM."

Let none be for a Party,
Let all be for the State;
Let the great man help the poor man,
Let the poor man help the great;
Let rights be even portioned,
Let Charters not be sold,
Let Canadians aim to equal
All that's good in days of old.

TORONTO.

1874

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These Letters were originally published in the *Globe* newspaper during the discussions on the "Pacific Railway Scandal" last summer.

At the request of some political friends, I have re-published them in pamphlet form for use during the present election campaign.

THOMAS HODGINS.

TORONTO, 17th January, 1874.

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LETTERS
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POLITICAL OR PARLIAMENTARY VERDICTS.

"The Court of Star Chamber became a Court of State, not a Court of Law. By an extension of its jurisdiction it, *for a time*, superseded the exercise of the more legal proceedings of Parliament against similar offences, and which would otherwise have become the object of Parliamentary prosecution."—*Hatsell's Precedents of the House of Commons*, Vol. IV., p. 73.

SIR,

Every historical incident bearing upon the constitutional question involved in the Pacific Scandal enquiry, is instructive to all who are conservative of constitutional practice, or students of Parliamentary Law; and in that view, few will read the references I give in this letter without feeling how aptly they apply to the present position of affairs.

The statesmen of the reign of William III. cannot be charged with unfaithfulness to the constitutional rights of the people, or to the privileges of Parliament. Their views then—expressed after the contests between the

Crown and the Commons had ceased, and when our present system of Parliamentary Government was established—have a peculiar force and interest to all concerned in public affairs.

During a conference between the Lords and the Commons, on the 13th January, 1692, on certain clauses of a Bill to regulate Trials for High Treason, the Managers on the part of the Lords made the following observations:—

“Suppose an ill Minister should apprehend an impeachment in Parliament; what manner of way could he hope better to come off by than by being tried before Parliament sits, and when his judges may be chosen so partially that he shall come off; and then it shall be said to Parliament, no man shall legally undergo two trials for the same offence.”

To this the managers for the Commons replied:—
“They thought it a strange and foreign supposition that a great and guilty Minister, finding himself liable to an impeachment in the next session of Parliament, should by his power procure himself to be tried and acquitted by a inquest of persons appointed on purpose; and then by a plea of *autrefois acquit* (formerly tried and acquitted for the same offence), prevent a second and true examination of his crimes in Parliament.” And then, as if to give force to their argument, the Managers add:—

“There is no example of this kind; and if such an *unheard of proceeding* should happen, it is left to consideration whether a Parliament *would not vindicate the Kingdom against so gross and fraudulent a contrivance.*”

Who could have supposed, when these observations were read in the Parliament of England in 1692, that another Parliament of British subjects, with a “Constitution similar in principle to that of the United Kingdom,” would in 1873 be brought face to face with the policy thus discussed; and have to consider how best to “indicate

the nation" against a "contrivance" and "unheard of proceeding," which these far-sighted statesmen denounced as "gross and fraudulent."

It may be that the Canadian Ministerial policy of 1873 will be found *foreshadowed* in the remarks of the Lords and Commons at this conference:—But if so, then on the Commons of Canada will rest the fulfilment of the promise made for them by their great prototype, in the reign of King William III; and, in vindicating the nation, they will declare, as did the Managers of the Commons in the Conference referred to: "The Commons of England would insist upon the old ways; would keep the balance of the Constitution as they found it; and not change the laws and customs of England, which hath been hitherto used and approved to the benefit of the Kingdom."

PARLIAMENTUM.

THE "SOUTH SEA" AND "CANADIAN PACIFIC" SCANDALS.

"The House of Commons,—an excellent conservator of liberty,—is solely entrusted with the first propositions concerning the impeaching of those, who for their own ends, though countenanced by any surreptitiously-gotten commands of the King, have violated that law which he is bound (when he knows it) to protect; and to the protection of which they are bound to advise him,—at least not to serve him contrary to the law."—*Commons Report on Impeachments, and the Invalidity of Lord Danby's Pardon*, 26th May 1679.

SIR,

About one hundred and fifty years ago, England was excited over a public scandal as disastrous to the public honour of many of her chief Ministers of State, as the Pacific Railway scandal is to some of ours. But the House of Commons, "that excellent conservator" of the

national honour, acted promptly and vigorously in the punishment of the guilty statesmen and officials who had brought discredit on the English name, by what became known as the "South Sea Bubble;" and the precedent has a lesson for Canadians.

The South Sea Company owed its prominence in history as a purely financial corporation; its great project being to undertake the National Debt, on being guaranteed 5 per cent. But its proceedings, in placing the equivalent of money—paid up stock—under the control of Ministers of the Crown, and members of the House of Commons—as well as its short-lived existence—furnish, in some measure, a similarity to the Public Scandal of our own day.

The Bank of England and the South Sea Company were competitors before the House of Commons in 1720, for the financial scheme of funding the National Debt; but the dazzling gold of the Company won for it the prize. Eight months afterwards, the Bubble (like our Pacific Company), burst; Parliament was hastily summoned and entrusted with the task of dealing out justice to the nation—a task which it pursued with such earnestness that, although Parliament commenced on the 8th December, 1720, some of the guilty members were expelled on the 28th January following.

No Royal Commission there invaded the Parliamentary jurisdiction of the House of Commons. The King, his Ministers, and the nation, all acknowledged the rightful supremacy of Parliament; nor would the temper of the House of Commons have permitted any such illegitimate offspring of inculpatcd Ministers to deprive them of their constitutional birthright. Mr. Lechmere (whose name has already appeared in these letters),* in reply to the

* He had been Attorney and Solicitor-General. See page 19.

argument that relief could be had at law, stated that, "they could seek for relief nowhere but in Parliament, and that it was a duty incumbent on the Legislature to relieve against this great evil."

The investigation disclosed that, while the Company's Bill was being promoted in Parliament, about £170,000 of South Sea stock had been placed to the credit of members of the Government, and of the House—without payment or valuable consideration—in fact as a "gift," without any "agreement" or "understanding" whatsoever. The Ministers implicated were, the Earl of Sutherland, First Lord of the Treasury; Mr. John Aislabie, M.P., Chancellor of the Exchequer; Mr. James Craggs, M.P., Postmaster-General; and Mr. Charles Stanhope, M.P., Secretary of the Treasury. Of these, the Earl of Sutherland, and Mr. Stanhope, were cleared by a very narrow majority, or as a writer observed, "by the unworthy partiality of Parliament." Mr. Craggs died pending the investigation, but his estates were confiscated; and Mr. Aislabie—who vehemently denied any corrupt bargain or intent in the matter—was expelled under the following resolutions:—

"That certain stock of the South Sea Company was bought (in the name of one Knight) for the use and on the account of Mr. John Aislabie, a member of this House, and then Chancellor and Under Treasurer of the Exchequer, and one of the Commissioners of His Majesty's Treasury—*after the proposals of the Company were accepted by this House*, and a Bill ordered to be brought in thereupon—without any money paid or security given by the said Mr. Aislabie for the said stock." "That the taking and holding the said stock, was a most notorious, dangerous, and infamous corruption in the said Mr. Aislabie."

After reciting further wrongful acts, the resolutions proceed:—"That the said John Aislabie be, for his said

offences, expelled this House, and be committed prisoner to his Majesty's Tower of London."

Equally effective were the proceedings taken against the five implicated members of the House of Commons. All were expelled the House, were committed to the Tower, and had their estates confiscated towards making good the losses of the Company, in the following sums:— Sir Theodore Janssen, M.P. for Yarmouth, £200,000; Sir Robert Chaplin, M.P. for Great Grimsby, £35,000; Mr. Jacob Sawbridge, M.P. for Crickdale, £72,000; Mr. Francis Eyles, M.P. for Chippenham, £45,000. Another, Sir George Caswell, M.P., who had been knighted three years before for the financial assistance he had rendered, in "having loaned to the Government large sums of money at 3 per cent., when they could get it nowhere else," was, notwithstanding his great services and the strong arguments urged in his behalf, made liable for £250,000, in addition to expulsion and imprisonment.

The Ministers of the Crown and the M.P.s involved in these corrupt practices were further restrained from leaving the Kingdom; and an act was passed (7th Geo. I., c. 28) disabling them from holding any office or place of trust under the Crown, and from sitting or voting in Parliament in future, to "deter all persons from committing the like wicked practices for time to come."

The petitions presented to Parliament on the occasion may be read as the expression of the widespread public sentiment of our own times:—"We are sharers in the national calamity which involves all, the wicked authors alone excepted, whose successful crimes have raised them above the reach of ordinary justice, and left them nothing to fear, or us to hope, but the power of Parliament."

With these Parliamentary examples before them, we look to the House of Commons to show how far the sen-

timents of the petitioners against the public scandal of 1721 indicate public expectation in 1873 :—" Your petitioners are persuaded, from the firmness and vigour of your Honourable House, that no difficulties will obstruct the glorious steps you are pursuing to bring to punishment the authors of this misery, *let the offenders be ever so distinguished by the greatness of their stations*; so, we hope, from the justice of your honourable House, such examples will be made as shall free us from the terror of such apprehensions for the future."

PARLIAMENTUM.

ENGLISH POLITICAL HONOUR AND CANADIAN
POLITICAL PRACTICE.

"To exercise corruptive political influence to any amount, all that is necessary to the ruler is, on every occasion that presents itself, to yield to the appetite of money, or benefit, in the breasts of any individuals connected with him in the way of interest or sympathy; for the purpose of their individual gratification the money or benefit is given; thereupon, by the eventual expectation of the like benefit from the like source, corruptive political influence is produced."—*Bentham on Constitutional Code, Works, Vol. IX., p. 66.*

SIR,

We are so accustomed to refer to England on questions of constitutional practice and Government, that an illustration from an English Parliamentary precedent on a question of political honour in the public men and rulers of the nation, may be useful to all who are watching the pending struggle of national honour against national dishonour with feelings of painful suspense.

It may be in the recollection of politicians of both sides, that during 1872, Sir Hugh Allan was not only a competitor for the contract for building the Pacific Rail-

way, but that he was also a contractor with the Government for the carriage of the mails from Quebec and Portland to Liverpool; that he was seeking a renewal of that contract, and that his contract was actually renewed under an order in Council dated the 28th January, 1873, at the rate of \$126,533 33 per annum, three days before he obtained the charter for the Canada Pacific Railway. The illustration I am about to give, will show how the English House of Commons, and a Conservative member of Lord Derby's Government, acted towards a public contractor who occupied a similar position to Sir Hugh Allan. The facts are taken from *Hansard's Parliamentary Debates*, 3rd series, vol. 157, p. 1, 331, and are as follows:—

Prior to 1859, the contract for carrying the mails from Dover to Calais, was held by Mr. Churchward, a Conservative, and an influential elector in Dover. His contract was about expiring, and negotiations commenced between him and the Government for its renewal. Lord Derby was then in power, and Captain Carnegie, R.N., was one of the Lords of the Admiralty. Sir John Pakington, the first Lord, was anxious that Captain Carnegie should contest Dover in the Government interest, and an interview was brought about by Sir John's private Secretary, between Captain Carnegie and Mr. Churchward. The conversation which then took place between them is thus given by Captain Carnegie in his evidence, before the Committee of the House of Commons, on "Mail and Telegraphic Contracts:"—

"Mr. Churchward spoke to me on the subject of the pending election for Dover; and, having volunteered his support, and promised me his assistance in general terms, he made an allusion to his anxiety to obtain a renewal of his contract; and he said that they (the Government) were anxious to defer signing the renewal of his contract

until after the election was over ; but he felt that would be too hard upon him ; that he would prefer voting for Mr. Bernal Osborne (the Whig candidate), and for myself, inasmuch as he would have a friend in power, whoever was in office. He also added that they wished him to return two Government members for Dover, and if they did so, he should be obliged to comply with it."

A further question was put by Mr. Cobden : "The words used conveyed the impression to your mind, did they not, that there was a negotiation going on ; on the one side Mr. Churchward insisting on having the contract signed before the election, and on the other side the Party insisting that the support should be given to the two candidates before the election came off ? Was that the impression upon your mind ?" To which Captain Carnegie answered in the affirmative.

The action of Captain Carnegie after this interview is stated by Captain Leicester Vernon, a Conservative, in the debate on the question which took place on the 27th of March, 1860, as follows :

"Captain Carnegie believing, as he says, that the vote and interest of Mr. Churchward, at Dover, was only to be obtained by his, (Captain Carnegie's) vote and interest at the Admiralty, he declined to stand for Dover. So he informed the Committee."

Lord Clarence Paget, another Conservative, stated : "Captain Carnegie came to consult me, and informed me of this conversation, and that it was quite impossible for him to accede to the proposition with regard to his standing for Dover—that the proposals were of such a nature that they would get them all into a scrape."

But the matter did not rest on the refusal of Captain Carnegie to place himself under obligation to the Contractor who had offered to become his "powerful constituent." The matter became public, and was investigated by the

Committee on Mail and Telegraphic Contracts, and notwithstanding Mr. Churchward's denial, the Committee made the following report :—

"It is in evidence before your Committee that Mr. Churchward, one of the contractors, on the eve of the last general election, at the time when the extension of his contract was under consideration at the Treasury, volunteered his support, as an influential elector for Dover, to Captain Carnegie, one of the Lords of the Admiralty, if he should become a candidate for that borough, on the expectation that his contract was to be extended; and expressed his intention, if required, to vote for two Government candidates for Dover."

The report then states that this contract had been recommended by the Admiralty six weeks before the conversation with Capt. Carnegie, and it then proceeds :—

"While most anxious for the fulfilment of all engagements entered into in good faith between the Government and individuals, the Committee *submit for the consideration of the House, whether Mr. Churchward, in having resorted to corrupt expedients, affecting injuriously the character of the representation of the people in Parliament, has not rendered it impossible for the House of Commons, with due regard to its honour and dignity, to vote the sum of money necessary to fulfil the agreement to extend his contract.*"

Mr. Gladstone during the debate supported the report of the Committee with these observations :—

"Mr. Churchward did resort to expedients affecting injuriously the dignity of Parliament. I ask, can a proceeding be justified where parties attempt to enter into a contract by the use of means which may be held to constitute a breach of the privileges of the House, tending to degrade it and the representation of the people."

Several other members took part in the debate, but the report of the Committee was sustained by a majority of 45.

Comment on the above facts is needless. They show how sensitive the public men of England are in protecting themselves and the nation, from even the shadow of an imputation upon their political honour and personal integrity. And if such are the sentiments of public duty entertained by English statesmen, by what code of political morality shall we judge Canadian Ministers and Privy Councillors who admit on oath that, prior to the elections of last year, they agreed amongst themselves to apply for money to one who was then a public contractor, like this Mr. Churchward, and who was pressingly anxious to obtain another large contract from them. One Minister admits that the intent in his mind was to bring the influence of the Pacific Railway project upon Sir Hugh Allan, to induce him to give money to Ministers. He states that about the middle of July, when himself and colleague were about going to the elections, he suggested that his colleague should apply to their public contractor and other friends for money to help in the elections. "I said that Sir Hugh Allan was a rich man, and *greatly interested in the enterprise which the Government were bringing forward.*" And when asked his special reason for such advice, he repeated his idea in these words:—"I had thought that Sir Hugh Allan *was specially interested in this* *h* *y project which we had brought forward.*"

At that time, the "special interest" Sir Hugh Allan had in the railway project was to get control of it;—to prevent it going into the hands of the Inter-Oceanic Company; and, therefore, in applying to Sir Hugh Allan for money, with the intent mentioned, he must have understood the *intent* Sir Hugh Allan would have in giving the money.

This contrast between English political honour and Canadian political practice, is suggestive to the people and their representatives. It is not an agreeable task to review the melancholy scene of our highest functionaries—the leaders of the people for so many years—appealing to a public contractor for money to assist them in maintaining place and power. The task has to be undertaken, but to the House of Commons, and to every elector who is contending for a purer honour in our public affairs, the nation looks with anxiety and hope.

PARLIAMENTUM.

THE PREROGATIVE OR PARLIAMENTARY TRIAL.

"The King suggested a Commission to examine upon oath all who could speak on this business, but Sir Edward Coke cautioned the House 'to take heed this Commission did not hinder the manner of their Parliamentary proceedings against a great delinquent,' whereupon the House of Commons declined it."—*Trial of Lord Bacon*, 1620.

"No instance has ever risen in England where our ancestors had permitted a prosecution against the Highest Offenders to be carried on anywhere but in full Parliament.—*Hansard's Debates*, Vol. VII. p. 233.

SIR,

The recent* declaration of Her Majesty's Representative to the Parliament of Canada, that he had thought it expedient, on the advice of his Ministers, to issue a Royal Commission to enquire into certain charges against those high officials, and the actual issue of that Commission, have raised some questions of constitutional law and practice which are worthy of discussion before

* This letter was written immediately after the prorogation of the 13th August, 1873.

the Commission can be accepted as clothed with legal powers to prosecute the enquiry. I propose, therefore, to discuss these questions by the light of English Parliamentary precedents, that the candid reader may draw his own conclusions as to the constitutional rule in such cases.

The charge against Ministers is two-fold—First: That they took money from an applicant for a public charter; Second: That the money so taken was used in promoting the election of their supporters. There can, then, be no evasion of the fact that this is a charge (to use an old Parliamentary phrase) of “high crimes and misdemeanours” against the chief functionaries of the land, for the trial of which Ministers have advised the Governor General to exercise his statutory power in appointing a Royal Commission.

The Statute 31 Vic., c. 38, authorizes the Governor in Council to issue Royal Commissions to enquire into any matter connected with the good government of Canada, or the conduct of any part of the public business thereof, where such enquiry is “*not regulated by any special law.*” Now, if this enquiry is “regulated by any special law,” the Commissioners’ warrants will be powerless.

The offence charged is one against the law and privileges of Parliament, and is not one new to its jurisdiction. Years ago, in England, chief Ministers of State were implicated in similar offences; and the Parliamentary history of that country is full of trials by which we can test the jurisdiction by which alone the charge must be tried.

“Custom is held to be law,” or, in law Latin, *Consuetudo pro lege servatur*; and, if so, then the custom or usage of the English Parliament in the trial of such charges will furnish a “special law” regulating this inquiry. Courts of law have held that “the constant declaration, by the

High Court of Parliament, of a privilege belonging thereto, is evidence of its existence." Since the early part of the seventeenth century, the Commons of England, by resolutions, debates, and impeachments, have furnished that "constant declaration" which is declared to be law.

The first and only instance where the Crown tendered a Royal Commission for the trial of a great offender, referred to in one of the head notes, was in 1620 by James I. when the Commons preferred charges against Lord Chancellor Bacon. By the advice of Sir Edward Coke, the House declined the Commission, lest it should interfere with their privileges, and the parliamentary trial proceeded.

Six years afterwards the Commons, in their *Remonstrance*, declared "That it hath been the ancient, constant, and undoubted right and usage of Parliament to question and complain of all persons of what degree soever, found grievous to the Commonwealth, *in abusing the power and trust committed to them by the Sovereign*; a course approved of by frequent precedents, in the best and most glorious reigns, appearing both in records and histories."—*Rushworth's Coll.*, vol. 1. p. 67.

In 1681 one Edward Fitzharris was impeached before the Lords on a charge preferred by the Commons, but the Lords refused to proceed on the impeachment, whereupon the Commons resolved, "That it is the undoubted right of the Commons, in Parliament assembled, to impeach before the Lords any Peer or Commoner for treason or any other crime or misdemeanour; and that the refusal of the Lords, to proceed in Parliament, is a denial of justice and a violation of the constitution of Parliaments. That for any inferior Court to proceed against the said Edward Fitzharris, or against any other person lying under an impeachment in Parliament, for the same crimes for which he or they stand

impeached, is a high breach of the privileges of Parliament." Several of the Lords entered a protest on their journal concurring in the above, whereupon the King dissolved Parliament.—3 *Hargrave's State Trials*, p. 226.

Another instance of the assertion of the privileges of the House] was made in 1716, by Mr. Ex-Solicitor-General Lechmere, in moving the impeachment of the rebel Lords. He said:—"The Commons of England would not permit the fate of those prosecutions to depend on the care or skill of those who are versed in the ordinary forms of justice. No instance has ever risen in the English history, where our ancestors had permitted a prosecution against the chief offenders to be carried on anywhere but in full Parliament. In justice to the King as well as to the people, we ought to take this into our own hands, and not to entrust it to any other body. It was the greatest ease, security, and support of the Crown, that no power should be lodged there to prevent the Commons from examining into the offence or to defeat the judgment given in full Parliament. And he took it to be the greatest advantage to the Crown that the Constitution of the kingdom had not, he thought, invested it with such power; and on the other hand it would clearly appear that *such a power was utterly inconsistent with the fundamental rights of Parliament.*'

The Ex-Solicitor-General was fully borne out by every precedent to be found in English Parliamentary history; and it will be with some curiosity a precedent would be studied which bends or breaks the strong pillar of parliamentary privilege which is so firmly built on these declarations of the "sole and undoubted right and usage of Parliament to try all persons found abusing the *power and trust* committed to them by the Sovereign."

The instances of the exercise of this power by the

Commons are abundant in English history, and need not be referred to at length. For Treason, Bribery, Malversation in Office, Selling Offices, and other public crimes, Parliament has impeached nobles, judges, commoners, bishops and clergymen, as well as high officers of State, and members of parliament as less conspicuous offenders. Throughout the long chain of trials, since Parliament asserted its privilege, we find only a few cases in which the Crown interfered—one where James I. recommended a Royal Commission for the trial of Lord Bacon, which the Commons declined; another, the trial of Fitzharris, where Charles II. dissolved Parliament pending his impeachment. Lord Danby's case may also be mentioned, where the King granted a pardon under the great seal, pending his impeachment, but it was held to be no bar to the prosecution of the Commons.

Apart from other considerations, then, are there not grave doubts but that this Royal Commission may be found to be beyond the scope of the statute, should its authority be impugned by any proceeding in any of our Courts of Law?

But the anomaly that the Ministry charged with these high crimes and misdemeanours have created a court and named the Judges by whom they are to be tried, has to be reasoned out to its legitimate conclusion. Apart from the Ministry of the day, the Crown has no independent authority in governing. All the acts of the Crown are the acts of the Ministry; and the Crown is only recognized as the head of the State guiding the Government of the country as advised by the Ministers of the day. A writer in the *Canadian Monthly* suggests that "the Governor-General must take the prerogative into his hands" with reference to this scandal. Acting upon such advice brought English kings into grave con-

flit with their Parliaments and people; and, in later days, in Canada, brought Governors into conflict with our system of Responsible Government. Nor can the writer have realized the effect of his other suggestion, that "a Royal Commission appointed by the Governor-General himself—not by the Minister using the Governor's name—is probably the best tribunal available in the absence of any proper provision for such cases in the Constitution." Such a proceeding could not take place without violence to the law. Apart from the rule that no Commission under the Great Seal can issue without the signature of one of the advisers of the Crown, the Act 31 Vic. c. 39, charges the Minister of Justice, as Attorney-General, with "*the settlement and approval of all instruments issued under the Great Seal of Canada*"—which of course includes the Royal Commission just issued. Besides, should the Governor take such a step, it would indicate a withdrawal of confidence from his Ministers, or would be an anomalous act of State, for which Ministers would not be responsible to Parliament, nor could the Governor-General—for "the Crown can do no wrong."

As before remarked, this Commission is a Court to try a charge of high crimes and misdemeanours. It is not, therefore, one which can be left to the unaided or spasmodic efforts of the Commissioners, who know nothing of the details of the charge, and who are not (to use a legal phrase) instructed for the prosecution. The law has rightly entrusted to the Executive the prosecution of all persons charged with offences; and for the proper administration of the law, the Executive is responsible to Parliament. The law officers of the Crown in Canada, having advised the Governor to prosecute this charge, must take their proper position as the only recognized public prosecutors; and therefore

the Attorney-General, or some gentleman of the long robe deputed by him, must prosecute the charge, and must enforce the law against disobedient witnesses. No private prosecutor has invoked the jurisdiction of this Royal Commission; and the prosecution must therefore remain in the hands of the parties who have created this anomalous jurisdiction. As in ordinary prosecutions, so in this, neither the Crown nor the Royal Commissioners should allow any private prosecutor to interfere with or control the clear duty of His Excellency's Ministers in the premises.

The suggestion that Mr. Huntington should prosecute cannot be entertained. Were he to do so he might, according to English precedents, be guilty of a breach of privilege of the Commons. Outside of Parliament he is a private individual. The law officers of the Crown could not retain him unless he resigned his seat in the House; while to sanction his appearance as private prosecutor would be to revolutionize our system of criminal procedure, and upset all established rules for the orderly conduct of public business. And if *he* could appear and prosecute, why may not every private person in Canada, who desires to bring the offenders to justice (and are there many?), appear and urge an equal right to conduct the prosecution in person or by counsel? What a Babel the Court of the Royal Commissioners would exhibit if such license were permitted, or such an innovation on established rules allowed, as is involved in the suggestion referred to?

And, again, how are the Royal Commissioners, or any prosecutor appearing before them, to know what branch of the case each witness is intended to sustain?

Thus, then, from its inception to its close, this Royal Commission will be beset with difficulties as to its jurisdiction, procedure, witnesses, &c. To get on in any

other than a blundering way, even with the best intentions, is impossible: and, at the end of it all, nothing will have been accomplished except—*Delay!*—for the right of the Commons to investigate the charge, in their own way and according to their own rules, will remain as free as ever; and Parliament may, next session, ignore the questionable legality of this Royal Commission, and like its great old prototype in 1681, declare “That for any inferior Court to proceed against any person lying under an impeachment in Parliament, for the same crimes for which they stand impeached, is a high breach of the Law and Privileges of Parliament.”

PARLIAMENTUM.

PARLIAMENTARY PROCEEDINGS QUESTIONED BY THE PREROGATIVE,

“Freedom of speech, and the debates and proceedings of Parliament ought not to be impeached or questioned in any Court or place out of Parliament.”—*Bill of Rights*, 1 Wm. III. and Mary, sess. 2, ch. 2, sec. 9.

“Constitutional law has for its object security against misrule; security against those adversaries of the community in whose instance, while their situation bestows on them the title of ‘rulers,’ the use they make of it adds the adjunct ‘evil,’ and thus denominates them ‘evil rulers.’”—*Bentham's Works*, Vol. IX. p. 9.

SIR,

Ordinary spectators at the opening of a new Parliament rarely consider that when the Speaker claims from the Sovereign's representative “all the undoubted rights and privileges of the Commons, especially freedom of speech in their debates,” he is presenting the historical claim of a privilege which is founded upon the ancient customs of Parliament, and confirmed by the

statute law of the land. And in view of this historical claim, it may be a startling proposition to consider whether, as charged by Mr. Huntington, it is "a breach of the privileges of the House that a Royal Commission should take cognizance of, or should assume to call upon him to justify words spoken upon the floor of the Commons."

No rule is more plainly written in the Constitution than that the Crown cannot notice any matter in agitation or debate in Parliament, until it is brought before the Sovereign in due course by address or otherwise. From Henry IV. to William III., successive Parliaments fought for this undoubted privilege, until its victory was inscribed in the famous Bill of Rights, of 1689. Since then great judges have recognized the privilege, and authoritatively declared it to be law; and since then, as each new Parliament in presenting its Speaker makes the historical claim, the Sovereign's answer—"grants, and upon all occasions will recognize and allow these constitutional privileges" of the Commons.

No one in perusing the Royal Commission can fail to perceive but that it is based entirely upon "proceedings in Parliament," without any recital of an address or resolution of the Commons praying the interference of the Crown, or submitting that the subject-matter of these "proceedings in Parliament ought to be questioned in any court or place out of Parliament."

It recites that the Hon. L. S. Huntington, "a member of the House of Commons, *in his place in Parliament*," on the 2nd of April last, made a statement "that he was credibly informed, and believed that he could establish by satisfactory evidence," the charges set forth in a proposed resolution, and moved "that a Committee of seven members should be appointed to enquire into the

same," which resolution was lost. That on the 8th of April last, the Right Hon. Sir J. A. Macdonald, "also a member of the said House of Commons, *in his place in Parliament,*" moved that a Select Committee of five members be appointed by the House" to enquire into and report upon the several matters contained in Mr. Huntington's statement in Parliament; which resolution was carried. It then refers to the Oaths Bill passed on the 3rd May; and further recites that on the said day the Hon. J. H. Cameron, "also a member of the said House of Commons, *in his place in Parliament,*" moved "that the said Select Committee should examine witnesses on oath." Then referring to the disallowance of the Oaths Bill, "whereby *one of the objects* desired by the said House of Commons cannot be attained," it makes a further recital that full enquiry should be made on oath, and declares "that the *Governor in Council* has deemed it expedient such enquiry should be made." It then confides the enquiry on Mr. Huntington's Parliamentary statement to the Commissioners to report the evidence, with any opinions they may think fit to express. No reason for taking the enquiry out of the jurisdiction of the House of Commons, appears on the face of the instrument, save that *one of the objects* desired by the House of Commons could not be attained.

It is needless to recount the frequent collisions between the Crown and Parliament on the immunity claimed by the latter for anything done or said in the House. The many precedents collected by writers on Parliamentary law, will show how essential to a free legislature the House of Commons have held this privilege. About the earliest acknowledgment of their right occurred on the accession of Henry IV. One Haxey, a member, had been called to account by the

preceding Sovereign for certain statements in Parliament; but the Commons petitioned the new king that such proceeding "was against the law and course of Parliament, and in annihilation of the customs of the Commons." The King, after taking advice of the Lords, assented, and thus all the branches of the legislature affirmed the privilege.

In 1621, after succeeding Sovereigns had violated the rule thus acknowledged, the Commons of England, in clear and explicit language, declared their privileges in the famous "Remonstrance" which King James I. tore out of the Journals. In it they claimed the rights of the Commons in Parliament, and of every member of the House, to have freedom of speech to propound, treat, reason, and bring to conclusion the making of laws, and the redress of mischiefs and grievances which daily happen in the realm; and that any matter or matters touching Parliament or Parliament business done in Parliament should only be shown to the King by the advice of all the Commons. *

Twenty years later the Lords and the Commons united in a declaration of their privileges in the petition and remonstrance presented to Charles I. in 1641. They affirm "That it is their ancient and undoubted right, that your Majesty ought not to notice any matter in agitation and debate in either House of Parliament, *but by their information or agreement.* That your Majesty ought not to propound any condition, provision, or limi-

* "Mr. Francis Nevill of Yorkshire, a member of the House, was (4th February, 1640), questioned for breach of privileges in the preceding Parliament, by discovering to the King and Council, what words some members did let fall in their debate in that House, whereby two members had been committed to the Tower by the Council. And Mr. Nevill, being brought to the Bar, was, by order of the House, committed a prisoner to the Tower of London."—*Lex Parliamenti*, p. 378.

tation to any matter in debate or in preparation in either House, or to manifest or declare your assent or dissent, approbation or dislike, of the same, before it be presented to your Majesty in due course of Parliament. That it belongs to the several Houses of Parliament respectively to determine such errors or offences, which—in words or actions—shall be committed by any of their members in the handling or debating of any matters there depending.” Such was the claim of the ancient, lawful, and undoubted privileges and liberty of Parliament, which have ever since been recognized as part of the *lex et consuetudo Parliamenti*.

In the reign of Henry VIII., statutory recognition was given to this privilege by the Act, 4th Henry VIII., c. 8, passed on the occasion of one Richard Strode, a member of the Commons, having been fined and imprisoned by one of the Courts of Law for certain proceedings in Parliament. After declaring the proceedings of the Court null and void, the Act provided:—“That all suits, charges, &c., put or had, or hereinafter to be put or had upon any person or persons that now of this present Parliament, or that of any parliament thereafter, shall be, for any bill, speaking, reasoning, or declaring any matter or matters concerning the Parliament, to be commenced or treated of, be utterly void and of none effect.” Thirty years afterward (says May) the Speaker of the Commons (Thomas Moyle) in addressing the King at the opening of a new Parliament, appears for the first time to have claimed this privilege.

Every student of English History knows of the Parliamentary contests which resulted in the passing of the Bill of Rights of William III., in which the constitutional guarantee of the privileges of Parliament is declared to be “the law of this realm for ever.” “That the freedom of speech and the debates or proceedings in Parliament

ought not to be impeached or questioned in any Court or place out of Parliament."

In *Lex Parliamenti*, p. 376, it is stated that in 1629 "all the judges agreed, upon questions propounded to them, 'that regularly a parliament-man cannot be compelled, out of Parliament, to answer things done in Parliament, in a Parliamentary course.'" And in the celebrated case of *Stockdale v. Hansard* (9 Ad. & Ellis 1), in which Parliamentary privileges were strongly assailed, the law was clearly explained by experienced judges. Lord Denman, C. J., said "The privileges of having their debates unquestioned was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must not be questioned in any other place. For speeches made in Parliament by a member, to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete immunity." Mr. Justice Littledale concurred in these views; and Mr. Justice Patteson added:—"Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled; whatever is done or said in either House should not be liable to examination elsewhere."

Now, looking at the terms of the Royal Commission, it cannot be denied but a Court has been established to enquire and report upon the truth of what was "said by a member in his place in Parliament;" and if this Commission can lawfully issue because one of the objects desired by the House of Commons cannot—according to the views of the Ministry, not the views of the Commons—be attained, why may not other pretexts be availed of by future Ministries to officiously intrude the prerogative, instead of allowing the will of Parliament to be declared; and that too in what is a matter of procedure or of

directions which the House had given a Committee for the conduct of enquiries within its undoubted jurisdiction.

It is satisfactory to find the constitutional question so fully sustained by all who have viewed it in the light of history and Parliamentary law ; and, although I cannot yet agree with the writer of "Current Events," in the *Canadian Monthly*, in his suggestion that "the Commissioners should be nominated, not by the accused, but by the Governor General himself, with such disinterested advice as he may be able to obtain," meaning that of "Privy Councillors who are not Ministers"—a suggestion which no Ministry could submit to ;—yet the general tone of his argument in favour of a purer honor in public affairs commends itself to all "who are now watching the triumph of iniquity with a swelling heart." And in such accord, his remarks on Mr. Huntington's letter declining to be a party to the removal of the impeachment from the jurisdiction of Parliament to that of the Royal Commission, may appropriately conclude these observations: "The letter appears to be plainly in accordance with the principles of constitutional right, of the common law, and of common justice, and to entitle the writer, as the defender of these principles against a misuse of the prerogative by the officers of the Crown, to the sympathy and support of the nation."

PARLIAMENTUM.

THE CASE OF LORD MELVILLE, 1805.

"Over the *acts*, and thereby over the *persons* of the possessors of the powers belonging to the Administrative Department of Government—the person of the Monarch alone excepted—the House of Commons possesses that control and superiority which is constituted by the direct as well as exclusive right of prosecution, and the virtual power of dismission:—including to the extent of the suffering the loss of office and emolument."—*Bentham's Works*, Vol. V., p. 197.

SIR,

Reference having been made to the case of Lord Melville, and the proceedings taken by the Crown pending his impeachment, I am induced to give a short sketch of these proceedings, taken from *Cobbett's Parliamentary Debates*, for 1805.

Lord Melville's career in Parliament prior to this date had been highly successful, though not very creditable to his political consistency; but, during this year (1805), ugly reports affecting his administration of the Navy Department—of which he was Treasurer and First Lord—assumed a tangible reality; and the Whig party pressed them upon the consideration of the House of Commons, and finally carried his impeachment.

On the 8th April, 1805, Mr. Whitbread moved a series of resolutions in the House, in which the *gravamen* of the charge against Lord Melville was thus stated:—

"That the Right Hon. Lord Viscount Melville, having being privy to and connived at the withdrawing from the Bank of England, for the purpose—as stated by Lord Melville—of private emolument to Mr. Trotter, sums issued to Lord Melville, as Treasurer of the Navy, and placed to his account in the Bank, according to the provisions of the Act, has been guilty of a gross violation of the law, and a high breach of duty."

This resolution was supported by Mr. Fox and the leading Whig talent in the House, and though opposed by Mr. Pitt, Sir William Grant, the then Master of the Rolls, and others, was carried.

On the 10th April Mr. Pitt announced to the House the resignation of Lord Melville of his office of First Lord of the Admiralty, and that His Majesty had accepted the same; and immediately thereafter Mr. Whitbread moved an address to the Crown, praying for the removal of Lord Melville, "from all offices held under His Majesty, and from his councils and presence for ever;" but, after a debate, he withdrew his proposed address, and moved "That the resolution of the 8th instant be laid before His Majesty," which was carried.

The King returned a non-committal reply to these resolutions, merely saying—"I shall, on all occasions, receive with the greatest attention any representation of my Commons, and I am fully sensible of the importance of the matter which is the subject of your resolutions."

This answer not being sufficiently satisfactory, Mr. Whitbread, on the 6th of May, was about to move that His Majesty's answer be taken into consideration, intending thereafter to propose an address to the Crown, that Lord Melville's name might be erased from the list of Privy Councillors, when Mr. Pitt interrupted him, to announce the proceedings the Cabinet had felt it to be their duty to take against their late colleague. After referring to the resolutions which had been laid before the King, he thus proceeded:—

"I have—however reluctantly from private feeling—felt it incumbent on me to propose the erasure of the noble lord's name from the list of Privy Councillors. I confess, Sir—and I am not ashamed to confess it—that whatever might be my deference to the House of Com-

mons, and however anxious I may be to accede to their wishes, I certainly felt a deep and bitter pang in being compelled to be the instrument of rendering still more severe the punishment of the noble lord. This is a feeling of which I am not ashamed. It is a feeling which nothing but my conviction of the opinion of Parliament, and my sense of public duty, could possibly overcome."

After further debate Mr. Whitbread withdrew his motion, and proceedings for the impeachment of Lord Melville then proceeded.

Other illustrations—and they are fortunately few—notably that of the famous Admiral, Lord Cochrane, (afterwards Earl of Dundonald), who on being convicted of complicity in stock-jobbing transactions in 1814, was deprived of his K.C.B., of his rank in the navy, and expelled from the House of Commons,—illustrate that stern adherence to public duty in the statesmen and people of England which has made them the guide and example of Canadians.

PARLIAMENTUM.

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